

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 2391 - SB 2253

March 21, 2012

SUMMARY OF BILL: Enacts the Tennessee Prescription Safety Act of 2012 by revising the current Controlled Substance Monitoring Act of 2002. Redefines a dispenser to include a pharmacist and a pharmacy; redefines law enforcement personnel, and defines a prescriber, health care practitioner, controlled substance, and a physician extender for the purposes of this Act. Renames the Controlled Substance Database Advisory Committee to the Controlled Substance Database Committee. Authorizes the Commissioner of Health to promulgate rules regarding sharing and dissemination of data and information in the controlled substance database. Requires all prescribers, dispensers, and physician extenders in practice in Tennessee for more than three calendar days per year to register in the database. Requires each prescriber or dispenser to, regarding each controlled substance dispensed, submit to the database, rather than to the Committee, information required under this part within 24 hours of prescribing or dispensing, instead of within 10 days following the last day of each calendar month. Adds the following information to be reported to the database: date the prescription was issued by the prescriber, whether the prescription was new or a refill, and source of payment. Requires the Committee to establish the electronic format in which the required information must be submitted to the database. Authorizes the Committee to grant a waiver allowing a prescriber or a dispenser up to seven days, rather than twenty-four hours to submit the required information, upon receiving a written statement from the prescriber or dispenser indicating why the submission requirement creates a hardship on them. Requires the Committee or its designee to review information in the database and notify the appropriate law enforcement personnel or the appropriate board if a violation of this Act may have occurred. Authorizes the following persons to access the confidential information in the database: a prescriber, supervising physician of the prescriber, or a dispenser conducting medication history reviews or drug utilization reviews who are actively involved in the care of the patient; and a physician extender to the extent the information relates specifically to a current patient to whom a controlled substance has been, is being, or is considered being prescribed or dispensed. Requires each user described above to have a separate identifiable authentication for access. Authorizes the Committee to release confidential information from the database to law enforcement personnel and requires the Committee to release such information when ordered by a court to do so and after an appropriate order is issued regarding the information to be released to the court.

Requires all prescribers or dispensers to check the controlled substance database prior to prescribing or dispensing a controlled substance to a patient at the beginning of a new episode of treatment and at least every six months of that episode of treatment. Increases, from a Class A misdemeanor to a Class E felony, the offense for deceiving or failing to disclose to a physician, nurse practitioner, ancillary staff or other health care provider from whom the person obtains more than 250 units of a controlled substance or a prescription for a controlled substance

that the person has received either the same controlled substance or a prescription for the same controlled substance or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use from another practitioner within the previous 30 days.

ESTIMATED FISCAL IMPACT:

On February 28, 2012, a fiscal note was issued estimating a fiscal impact as follows:

*Increase State Expenditures – \$281,700/One-Time
\$230,300/Recurring
\$57,400/Incarceration**

Other Fiscal Impact – The one-time costs of \$281,700 will be funded by the Department of Mental Health using the administrative portion of the federal FY11-12 Substance Abuse Prevention and Treatment block grant.

Funding in the amount of \$28,300 for incarceration costs is included in the Governor's Proposed FY12-13 Budget.

Due to erroneous information, this impact was in error. Based upon additional information provided by the Department of Mental Health, the estimated impact is:

(CORRECTED)

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Assumptions:

- Any rulemaking required by this bill will be accomplished during regularly scheduled boards and Committee meetings and can be accommodated within existing budgetary resources.
- Any increase in expenditures for the boards that regulate and license prescribers and dispensers to accommodate additional disciplinary cases will be not significant and can be accommodated within existing resources of the affected boards.
- According to the Department of Health (DOH), the increase in registrations that would result from the requirement that all prescribers, dispensers, and physician extenders who

practice in Tennessee for at least three days per year must register in the database would require the addition of a Statistician 2 position to process the registration requests. This employee will also handle the increase in requests for reports from the database as a result of the requirement to disseminate information contained in the database pursuant to a court order.

- According to DOH, the increase in the number of waiver requests resulting from changing the reporting requirement to within 24 hours of dispensing a controlled substance would increase the cost of hosting the database by the vendor and would require the addition of a Licensing Technician position to process the requests.
- One-time increase in state expenditures associated with these two positions will be \$8,600 (\$5,400 office setup + \$3,200 computers).
- Recurring state expenditures will increase by \$110,857 (\$61,802 salary + \$21,055 benefits and insurance + \$15,800 administrative support services + \$8,200 office lease + \$2,800 communications + \$1,200 supplies).
- According to DOH, the increase in the number of reports that result from the requirement that all prescribers and dispensers check the database prior to prescribing or dispensing a controlled substance to a patient at the beginning of a new episode of treatment and at least every six months of that episode of treatment will increase the cost of hosting the database by the state's vendor.
- The number of reports requested for 2011 from 10,248 registered prescribers and dispensers was 1.5 million. The Department estimates that the number of reports requested would increase to 18 million for all 47,000 prescribers and dispensers required to check the database as a result of this bill. This will result in a one-time increase in state expenditures of \$228,600 and a recurring increase in state expenditures of \$110,400 for vendors to support the increase in patient searches and the 24-hour upload of information requirement.
- DOH expects the number of reports requested to increase to 30 million with the increase in registered prescribers, if the Commissioner, as authorized, enters into agreements that will interconnect the database with the databases in other states. Additionally, to interconnect the database with databases in other states would result in an increase in the cost of hosting the database by the state's vendor.
- One-time increase in state expenditures associated with interconnecting the database with databases in other states will be \$44,500. Recurring state expenditures will increase by \$9,000.
- The total one-time increase in state expenditures will be \$281,700 (\$8,600 + \$228,600 + \$44,500).
- The total recurring increase in state expenditures will be \$230,257 (\$110,857 + \$110,400 + \$9,000).
- Pursuant to Tenn. Code Ann. § 4-3-1011, all health-related boards are required to be self-supporting over a two-year period. As of June 30, 2011, the Division of Health Related Boards had a cumulative balance of \$10,859,982.82.
- State court convictions are 10 percent of the total convictions statewide. According to the Administrative Office of the Courts, there has been an average of two misdemeanor convictions for each of the past four years for a violation involving more than 250 units of a controlled substance. Total convictions, including general sessions courts, are estimated to be an average of 20 per year.

- The Department of Correction (DOC) estimates 10 percent or 2 offenders a year will receive a Class E felony rather than a misdemeanor conviction as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two Class E offenders per year.
- According to DOC, the average operating cost per offender per day for calendar year 2012 is \$61.36. The average post-conviction time served for a Class E felony is 1.28 years (467.52 days) at a cost of \$28,687.03 (\$61.36 x 467.52 days). The total additional operating cost for two offenders is \$57,374.06 (\$28,687.03 x 2 offenders).
- Due to the small number of offenders and the relatively short time served, no recidivism discount has been applied for these offenses.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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